



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

February 22, 1977

Mr. Victor A. Wild
Deputy Pima County Attorney
111 West Congress Street
Tucson, Arizona 85701

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: 77-43 (R76-416)

Dear Mr. Wild:

This letter is in response to your opinion request of September 24, 1976, in which you ask the following question:

Are counselors in an adult division program subject to criminal liability as accessories under A.R.S. § 13-141, if they fail to disclose felonies reported to them during the course of the counseling relationship?

The Pima County Attorney's Office operates an Adult Diversion Program for selected first offenders. The offender is offered individual and group counseling as part of a comprehensive pre-trial rehabilitation program. After the successful completion of the diversion program, the criminal charges are dismissed, with prejudice. Failure to abide by the obligations of the program results in the divertee's rejection from the program. Criminal charges may then be reinstituted at the discretion of the Pima County Attorney.

The program is completely voluntary. The potential divertee applies for admission by agreeing, inter alia, to the following obligation:

5. I must cooperate with and report to my counselor as required. I must also cooperate with any agency to which I am referred by my counselor. Form CA-108.

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The divertee then signs a formal agreement which appears to give the Diversion counselor broad control of an individualized program for each participant. Form CA-110.

During the course of the counseling relationship, the divertee may relate details of other felonies that either he, or others, have committed. The present inquiry is concerned with the counselor's potential criminal liability as an accessory after the fact, should he not disclose these felonies to public officials, pursuant to A.R.S. § 13-141 which provides:

Any person who, after a felony has been committed, harbors, conceals or aids a principal in such felony with the intent that such principal may avoid or escape arrest, trial, conviction or punishment and knows or has reason to believe that such principal has committed or has been charged or convicted of such felony, is an accessory.

Laws 1976, Ch. 116, § 3.

Under the above statute, it appears that a counselor's only concern might be with the crime of concealment, but not harboring or aiding, both of the latter presupposing the provisions of physical support, lodging or assistance for the principal.


The previous version of A.R.S. § 13-141 stated, in pertinent part, that all persons, who after full knowledge that a felony has been committed "conceal it from the magistrate . . . are accessories." § 13-141, Laws 1969. This has been interpreted to mean that one must first physically be brought before the magistrate before the crime of misprision¹ can occur. State v Hunt, 2 Ariz.App. 6, 406 P.2d 208 (1965).

1. To the extent that Op.Atty.Gen. 73-41-L (1973) which does not consider State v. Hunt, supra is inconsistent, it is hereby overruled.

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The present version of A.R.S. § 13-141 does not, like its predecessor, proscribe the concealment of information concerning the commission of a felony. Accordingly A.R.S. § 13-141 does not impose criminal liability of the diversion counselor for passive non-disclosure of crimes revealed to him.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce Babbitt", with a stylized flourish at the end.

BRUCE E. BABBITT
Attorney General

BEB:SF:jrs